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10 CFR Ch. III (1–1–14 Edition)

written request for a hearing, and/or the time for filing a written answer to the matters contained in the notification letter. The Manager shall notify the Director, Office of Personnel Security, DOE Headquarters, when such extensions have been approved.

[59 FR 35185, July 8, 1994, as amended at 71 FR 68730, Nov. 28, 2006]

§ 710.24 Appointment of DOE Counsel.

(a) Upon receipt from the individual of a written request for a hearing, an attorney shall forthwith be assigned by the Manager to act as DOE Counsel.

(b) DOE Counsel is authorized to consult directly with the individual if he is not represented by counsel, or with the individual's counsel or representative if so represented, to clarify issues and reach stipulations with respect to testimony and contents of documents and other physical evidence. Such stipulations shall be binding upon the individual and the DOE Counsel for the purposes of this subpart.

§ 710.25 Appointment of Administrative Judge; prehearing conference; commencement of hearings.

(a) Upon receipt of a request for a hearing, the Manager shall in a timely manner transmit that request to the Office of Hearings and Appeals, and identify the DOE Counsel. The Manager shall at the same time transmit a copy of the notification letter and the individual's response to the Office of Hearings and Appeals.

(b) Upon receipt of the hearing request from the Manager, the Director, Office of Hearings and Appeals, shall appoint, as soon as practicable, a Administrative Judge.

(c) Immediately upon appointment of the Administrative Judge, the Office of Hearings and Appeals shall notify the individual and DOE Counsel of the Administrative Judge's identity and the address to which all further correspondence should be sent.

(d) The Administrative Judge shall have all powers necessary to regulate the conduct of proceedings under this subpart, including, but not limited to, establishing a list of persons to receive service of papers, issuing subpoenas for witnesses to attend the hearing or for the production of specific documents or

other physical evidence, administering oaths and affirmations, ruling upon motions, receiving evidence, regulating the course of the hearing, disposing of procedural requests or similar matters, and taking other actions consistent with the regulations in this subpart. Requests for subpoenas shall be liberally granted except where the Administrative Judge finds that the grant of subpoenas would clearly result in evidence or testimony that is repetitious, incompetent, irrelevant, or immaterial to the issues in the case. The Administrative Judge may take sworn testimony, sequester witnesses, and control the dissemination or reproduction of any record or testimony taken pursuant to this part, including correspondence, or other relevant records or tangible evidence including, but not limited to, information retained in computerized or other automated systems in possession of the subpoenaed person.

(e) The Administrative Judge will determine the day, time, and place for the hearing. Hearings will normally be held at or near the appropriate DOE facility, unless the Administrative Judge determines that another location would be more appropriate. Normally the location for the hearing will be selected for the convenience of all participants. In the event the individual fails to appear at the time and place specified, the record in the case shall be closed and returned to the Manager, who will then make a final determination regarding the eligibility of the individual for DOE access authorization.

(f) At least 7 calendar days prior to the date scheduled for the hearing, the Administrative Judge will convene a prehearing conference for the purpose of discussing stipulations and exhibits, identifying witnesses, and disposing of other appropriate matters. The conference will usually be conducted by telephone.

(g) Hearings shall commence within 90 calendar days from the date the individual's request for hearing is received by the Office of Hearings and Appeals. Any extension of the hearing date past 90 calendar days from the date the request for hearing is received by the Office of Hearings and Appeals shall be

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approved by the Director, Office of Hearings and Appeals.

§ 710.26 Conduct of hearings.

(a) In all hearings conducted under this subpart, the individual shall have the right to be represented by a person of his own choosing. The individual is responsible for producing witnesses in his own behalf, including requesting the issuance of subpoenas, if necessary, or presenting other proof before the Administrative Judge to support his defense to the allegations contained in the notification letter. With the exception of procedural or scheduling matters, the Administrative Judge is prohibited from initiating or otherwise engaging in *ex parte* discussions about the case during the pendency of proceedings under this part.

(b) Unless the Administrative Judge finds good cause for granting a waiver of this paragraph or granting an extension of time, in the event that the individual unduly delays the hearing, such as by failure to meet deadlines set by the Administrative Judge, the record shall be closed, and a final decision shall be made by the Manager on the basis of the record in the case.

(c) Hearings shall be open only to DOE Counsel, duly authorized representatives of the staff of DOE, the individual and his counsel or other representatives, and such other persons as may be authorized by the Administrative Judge. Unless otherwise ordered by the Administrative Judge, witnesses shall testify in the presence of the individual but not in the presence of other witnesses.

(d) DOE Counsel shall assist the Administrative Judge in establishing a complete administrative hearing record in the proceeding and bringing out a full and true disclosure of all facts, both favorable and unfavorable, having a bearing on the issues before the Administrative Judge. The individual shall be afforded the opportunity of presenting evidence, including testimony by the individual in the individual's own behalf. The proponent of a witness shall conduct the direct examination of that witness. All witnesses shall be subject to cross-examination, if possible. Whenever reason-

ably possible, testimony shall be given in person.

(e) The Administrative Judge may ask the witnesses any questions which the Administrative Judge deems appropriate to assure the fullest possible disclosure of relevant and material facts.

(f) During the course of the hearing, the Administrative Judge shall rule on all questions presented to the Administrative Judge for the Administrative Judge's determination.

(g) In the event it appears during the course of the hearing that Restricted Data or national security information may be disclosed, it shall be the duty of the Administrative Judge to assure that disclosure is not made to persons who are not authorized to receive it.

(h) Formal rules of evidence shall not apply, but the Federal Rules of Evidence may be used as a guide for procedures and principles designed to assure production of the most probative evidence available. The Administrative Judge shall admit into evidence any matters, either oral or written, which are material, relevant, and competent in determining issues involved, including the testimony of responsible persons concerning the integrity of the individual. In making such determinations, the utmost latitude shall be permitted with respect to relevancy, materiality, and competency. The Administrative Judge may also exclude evidence which is incompetent, immaterial, irrelevant, or unduly repetitious. Every reasonable effort shall be made to obtain the best evidence available. Subject to §§ 710.26(1), 710.26(m), 710.26(n), 710.26(o), hearsay evidence may in the discretion of the Administrative Judge and for good cause shown be admitted without strict adherence to technical rules of admissibility and shall be accorded such weight as the circumstances warrant.

(i) Testimony of the individual and witnesses shall be given under oath or affirmation. Attention of the individual and each witness shall be directed to 18 U.S.C. 1001 and 18 U.S.C. 1621.

(j) The Administrative Judge shall endeavor to obtain all the facts that are reasonably available in order to arrive at findings. If, prior to or during the proceedings, in the opinion of the